



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Safeware, Inc.
File: B-246405.2
Date: May 7, 1992

Bobbi Borges for the protester.
James E. Trickett, Department of Health and Human Services,
for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Where the solicitation required the submission of descriptive literature to establish the acceptability of equal products and the descriptive literature clause cautioned that the failure to provide such literature would result in rejection of the bid, the procuring agency properly rejected the protester's bid as nonresponsive where the protester offered multiple alternate equal products, but did not include descriptive literature on all of the multiple products.

DECISION

Safeware, Inc. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. 221-91-2251, issued by the Department of Health and Human Services, Food and Drug Administration (FDA), for disposable protective clothing.

We deny the protest.

FDA issued the IFB to obtain various articles of disposable protective clothing on a brand name or equal basis under an indefinite quantity/firm, fixed-price contract. Ten different articles of protective clothing were specified under 10 line items. Only a single award was to be made. Each brand name was accompanied by a list of salient characteristics. The IFB stated that equal products would be considered if the government determined that the offered product(s) fully met the salient characteristics. To this effect, the IFB required bidders to submit sufficient descriptive literature for the government to determine whether the equal product(s) met all of the salient

characteristics, and to establish exactly what the bidder intended to furnish and what the government would be binding itself to purchase by making an award. The IEB further cautioned that the contracting officer was not responsible for locating or securing any information not identified in the bid and reasonably available to the contracting office. The IEB's descriptive literature clause finally advised that the failure of the descriptive literature to show that the product offered conformed to the requirements would require rejection of the bid.

On September 23, IEDA received 10 bids in response to the IEB. IEDA determined that 8 of the 10 bids were nonresponsive, including Safeware's apparent low bid of \$736,504.22. Award was made to Life Science Products, Inc., the low responsive bidder, at \$778,688.65.

IEDA determined that Safeware's bid, which proposed multiple equal products under 7 of the 10 line items, lacked sufficient descriptive literature for the government to determine whether all of the proposed equal products met the salient characteristics. Safeware maintains that its bid contained sufficient descriptive literature for this purpose.

Where, as here, descriptive literature is required to establish conformance with the specifications and bidders are cautioned that nonconformance will cause the bid's rejection, a bid must be rejected as nonresponsive if the submitted literature fails to show that the offered product complies with the specifications. Alternate Power and Energy Corp., IB-228746, Nov. 3, 1987, 87-2 CPD ¶ 440. Thus, even if the offered product, in fact, possesses the required features, the rejection of the bid is required when the literature submitted with the bid does not clearly show conformance with the requirements. Id.

We find that IEDA properly determined that Safeware's bid lacked sufficient descriptive literature to be considered responsive. Safeware proposed multiple alternate manufacturer products for the majority of the line items. For some of the proposed alternate products, Safeware's bid included sufficient descriptive literature. However, for a number of alternate products, Safeware did not include any descriptive literature. For example, Safeware proposed to furnish the Marmac "Dupont Tyvek Coveralls with Attached Boots" as an alternate equal product but there is no evidence that Safeware ever submitted descriptive literature on this product. Further, for two other asserted equal products for this same item, Safeware submitted letters from the manufacturers indicating that the products met the salient characteristics, but these letters reference products not appearing in these manufacturers' standard commercial brochures submitted by Safeware. A bidder's

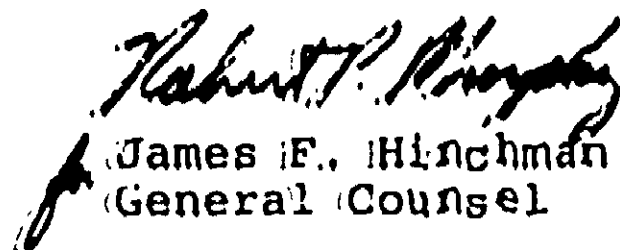
simple statement that it will comply, along with inadequate descriptive literature, is not sufficient to satisfy an IEB requirement for descriptive literature. Systems Integrated, IB-225700, May 18, 1987, 87-1 CPD ¶ 494.

Safeware's bid can be fairly interpreted as reserving the right to supply any one of its proffered alternate products. In this regard, Safeware stated with respect to its offered alternates:

"PLEASE NOTE; BECAUSE OF THE DURATION OF THIS CONTRACT (3 YEARS) IT IS IMPERATIVE TO HAVE MORE THAN ONE MANUFACTURER AVAILABLE SO TIMELY DELIVERIES CAN BE MADE."

In view of the fact that Safeware did not provide descriptive literature on some of the products which it proposed under the IEB, we find that IEDA properly rejected the bid as nonresponsive, since IEDA had no basis to determine the acceptability of all of the products that Safeware reserved the right to furnish.

The protest is denied.


James E. Hinchman
General Counsel